

A medical appliance is defined as an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See 86 Ill. Adm. Code 130.310(c). (This is a GIL.)

January 10, 2005

Dear Xxxxx:

This letter is in response to your letter dated November 12, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

In August we attended the SHOW, and picked up a brochure at the booth of the ABC. In this brochure, there was an article that stated the tax law in Illinois has been changed and people with disabilities now pay 1% sales/use tax on vertical lifting devices, such as chair lifts and vertical platform lifts.

Our son was in an accident 1 ½ years ago, and the current house that we live in is too small. He is paralyzed and in a wheelchair. We are in the process of building a handicapped accessible home, and we are putting in a vertical lift elevator to give him access to the second floor, where his equipment will be. After several inquiries with the state of Illinois, no one seems to be able to tell me if vertical lifts or platform lifts for the house are taxed at the lower rate.

After talking with the Illinois Revenue Office, it was recommended that I contact the Legal Department.

I am enclosing a copy of the information that I received at the SHOW. Is this item taxed at a lower rate? Is there a booklet in print that people with disabilities can use for a guideline?

DEPARTMENT'S RESPONSE:

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided. Medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See 86 Ill. Adm. Code 130.310. Items subject to this lower tax rate include prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing utensils, syringes, and needles used by diabetics, for human use.

Medical devices that are used for diagnostic or treatment purposes do not qualify for the lower tax rate. Generally, medical tools, devices and equipment used for diagnostic, rehabilitative and treatment purposes do not qualify for the reduced rate of tax for medical appliances as such items, while being used for treatment of patients, are not directly substituting for a malfunctioning part of the body. See 86 Ill. Adm. Code 130.310(c).

Wheelchairs and walkers qualify for the low rate of tax. Corrective medical appliances such as hearing aids, glasses, and contact lenses are also eligible for the lower sales tax rate. See Section 130.310(c)(2). However, home lift systems and elevators, bed trapezes, and shower/commode chairs do not generally qualify for the low rate. In order to qualify for the low rate of tax as a medical appliance, the item must directly substitute for a malfunctioning part of the body. These items do not meet this requirement.

Stairway wheelchair lifts, stairway chairlifts, and vertical chairlifts are devices which, while used to assist a person with physical disabilities, do not directly substitute for a malfunctioning part of the body. Such items do not fall within the definition of medical appliance and are, therefore, taxed at the state sales tax rate of 6.25% plus any applicable local taxes. Residential elevators are, likewise, not considered medical appliances as such items do not directly substitute for a malfunctioning part of the body.

Please note, for tangible personal property permanently affixed or incorporated into realty, the contractor, acting as an end user, incurs Use Tax, and has no authority to collect Use Tax from the purchaser. Please see 86 Ill. Adm. Code 130.1940(c)(1). If a construction contractor permanently affixes or incorporates tangible personal property into realty, his or her customer incurs no tax. However, the construction contractor, rather, incurs Use Tax liability on his or her cost price of the tangible personal property installed.

Many construction contractors pass on the amount of their Use Tax liabilities to their customers in the form of higher prices or by including provisions in their contracts that require customers to reimburse the contractor for its liability. This reimbursement cannot be billed to a customer as a "sales tax," but can be listed on a bill as a reimbursement of tax. Whether a contractor requires a tax reimbursement from its customer or raises its price is a business decision on the part of the contractor.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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